IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23..3..2007

CORAM

THE HONOURABLE MR. JUSTICE K. CHANDRU

Writ Petition No.2039 of 2006
in
W.P.M.P.No.18170 of 2006

V. Maheswari .. Petitioner

Vs.

1. The Secretry,
Tamil Nadu Manual Labour Social
Security and Welfare Board,
No.36/1, Ramakrishnapuram
Commercial Complex,
North Usman Road, T. Nagar,
Chennai 600 017.

2. The Divisional Manager,
United India Insurance Corporation,
Tarapur Towers, 7th Floor,
826, Anna Salai, Chennai 2.

3. The Deputy Inspector of Labour,
III Circle, Salem. .. Respondents

Writ Petition No.2039 of 2006 has been filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus directing the 2nd respondent to disburse the insurance amount payable to the petitioner for the death of her husband due to accident on his duty on 22.5.2001 in accordance with the order dated 11.2002 issued by the 1st respondent with interest till the realization of the amount.

For Petitioner : Mr.A. Nagarathinam
For Respondent 2: Mr.Vijayaraghavan

For Respondents: Mrs.C.K. Vishnupriya, GA
1 and 3

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O R D E R

The petitioner is the wife of late K.Velu, who was an Auto Rickshaw driver at Salem Town. He got himself registered under the Tamil Nadu Manual Labour Social Security and Welfare Board [for short, 'Board'] and his Registration No. is 06 Auto 1009. He was running an Auto Rickshaw bearing Registration No.TDL 3731 owned by one K.Abdul Vahab. By virtue of his membership, the petitioner is eligible to avail the benefit of the Tamil Nadu Manual Workers' Social Security and Welfare Scheme, 2001 framed under Section 3 of the Tamil Nadu Manual Workers (Regulation of Employment and conditions of work) Act, 1982 [for short, 'Manual Workers Act'].

2. Unfortunately, on 22.5.2001, the petitioner's husband met with an accident while he was driving the auto near Padri Nagar, Salem and sustained grievous injuries. The Inspector of Police, Shevapet Police Station, Salem registered a case in this regard in Crime No.397 of 2001 dated 22.5.2001. As he succumbed to injuries, Post Mortem was performed at Government Mohan Kumaramangalam Medical College Hospital, Salem, and Post Mortem Certificate dated 23.5.2001 was issued to the petitioner and Death Certificate dated 06.6.2001 was also obtained from the Salem Corporation. The petitioner also obtained legal heir Certificate dated 22.6.2001 from the Tahsildar, Salem. Thereafter, the petitioner made a representation dated 03.8.2001 to the first respondent Board asking them to release the insurance amount. Pursuant to the representation, the first respondent Board, vide letter dated 14.11.2002, directed the petitioner to appear before them and furnish relevant documents which the petitioner had furnished on 22.11.2002. A claim form was also sent to the first respondent Board in the prescribed format, upon which the Board issued a letter dated 22.11.2002 to the Inspector of Labour, Salem and the Deputy Commissioner of Labour, Salem directing them to make an enquiry and submit a report regarding the death of the petitioner's husband. A final report was also submitted to the Board on 25.11.2002. Thereafter, based on the report submitted by the third respondent Deputy Inspector of Labour, Salem and the Deputy Commissioner of Labour, Salem, the Board issued a letter to the second respondent Insurance Company in November 2002 asking them to release the insured amount as per the demand. Thereafter, there was no reply from them which forced the petitioner to file the present writ petition seeking for a direction to the second respondent to disburse the insurance amount in accordance with law.

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3. The writ petition was admitted on 27.01.2006. I have heard the arguments of Mr.A.Nagarathinam, learned counsel appearing for the petitioner, Mrs.C.K.Vishnupriya, learned Government Advocate representing the respondents 1 and 3 and Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent and have perused the records.

4. Mr.Vijayaraghavan, learned counsel appearing for the second respondent stated that even before the notice was issued in the writ petition, they issued a letter to the Board repudiating the claim made on behalf of the petitioner and accordingly, produced a communication sent by the second respondent to the first respondent Board. In that communication, it is stated that the second respondent's investigation brought to the notice of the insurer that the cause of death was murder due to personal enmity and, therefore, it does not fall within the scope of cover of the policy.

5. Without driving the parties to a further litigation, with the consent of the learned counsel for the parties, the main writ petition itself is taken up for disposal.

6. The arguments were advanced on the stand taken by the second respondent Insurance Company. Mr.Vijayaraghavan, learned counsel appearing for the Insurance Company submitted that the murder due to personal enmity is not covered by the policy and, therefore, they are not liable to make any payment. This argument is not available to the second respondent in view of the fact that Section 20 of the Manual Workers Act applies the provisions of the Workmen's Compensation Act 1923 to the manual workers, which reads as follows:

> "20. Application of Workmen's Compensation Act, 1923 to manual workers:-
>
> The provisions of the Workmen's Compensation Act, 1923 (Central Act VIII of 1923) and the rules made from time to time thereunder, shall mutatis mutandis apply to manual workers employed in any scheduled employment to which this Act applies, and for that purpose they shall be deemed to be workmen within the meaning of that Act; and in relation to such workmen, employer shall mean where a Board makes payment of wages to any such workmen, the Board, and in any other case, the employer as defined in this Act."

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7. Under Section 3 of the Manual Workers Act, a Scheme has been framed known as the Tamil Nadu Manual Workers Social Security and Welfare Scheme, 2001, [for short, 'Scheme'] which is applicable to the case of the petitioner's husband. Even though the said Scheme has been superseded in 2006 by another Scheme, for the purpose of this case, it is the 2001 Scheme, which is material. Paragraph 17 of the said Scheme reads as follows:

"17. Group Personal Accident Relief:--

(1) All registered manual workers when met with the accident are eligible for Group Personal Accident Relief.

Explanation.-- For the purpose of this clause "Accident" means any bodily injury or death or loss of limbs or loss of sight resulting solely and directly from accident arising out of and in the course of his employment but does not include any intentional self injury, suicide, attempted suicide, injury caused while under the influence of intoxicating liquor or drugs or resulting from the injured worker committing any breach of the law or rules or regulations or instruction applicable from time to time.

(2) The Board shall insure all the registered manual workers with an insurance company for the sum specified by the insurance company and shall pay the premium towards such insurance. The Board shall be the policy holder on behalf of the registered manual workers and shall renew the policy every year.

(3) The risk covered by the scheme and the amount of compensation payable shall be as follows:

(a) Death Rs.1,00,000/-"

8. Once this statutory basis is found in favour of the petitioner, the only question remains is that if the member of the Scheme dies due to any other reason, then, there is no escape for the respondents for denying the benefit arising out of the Scheme.

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9. In the present case, there is no evidence that the petitioner's husband died due to murder because of any previous enmity and even the First Information Report filed by the Police shows that it was out of an accident. Even otherwise, if it is taken as a case of murder, the legal position with reference to the admission of claims under the provisions of the Workmen's Compensation Act, 1923 is clear. In this context, is useful to refer to the decision of the Bombay High Court reported in AIR 1955 BOMBAY 105 [Bhagubai v. General Manager, Central Railway, V.T., Bombay] wherein in paragraphs 1 and 2, it was held as follows:

Para 1: "This is a rather unusual case arising under the Workmen's Compensation Act. The facts briefly are that the deceased was a mukadam employed in the Central Railway at Kurla station and he lived in the railway quarters adjoining the Kurla railway station. It was found as a fact that the only access for the deceased from his quarters to the Kurla railway station was through the compound of the railway quarters. On 20-12-1952, the deceased left his quarters a few minutes before midnight in order to join duty and immediately thereafter he was stabbed by some unknown person. It is not disputed by the railway company that the deceased died as a result of an accident, nor is it disputed that the accident arose in the course of his employment..."

Para 2: "Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own

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conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident."

10. Subsequently, the Supreme Court, with reference to the provisions of the Workmen's Compensation Act, in its decision reported in 1970 (1) SCR 869 [Mackinnon Mackenzie and Co., (P) Ltd. Vs Ibrahim Mahammad Issak] held in paragraph 5 as follows:

Para 5: "... To come within the Act the injury by accident must arise both out of and in the course of employment. The words in the course of the employment mean in the course of the work which the workman is employed to do and which is incidental to it. The words arising out of employment are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. In other words, there must be a casual relationship between the accident and the employment. The expression arising out of employment is again not confined to the mere nature of employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises out of employment. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act...."

11. This Court vide its decision reported in 1983 (II) L.L.J. 326 [Superintending Engineer, Parambikulam Aliar Project, Pollachi vs. Andammal] dealt with a claim made by a workman's legal heir on account of the death due to murder and it was held in paragraph 7 of the judgment as follows:

Para 7: "... It has also to be remembered that but for the employment of the deceased he would not have been at the place where the accident happened and caused and proximate connection between the accident and employment is also established..."

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12. Once again, this position was reiterated by this Court vide its decision reported in 1995 (II) L.L.J. 231 [Senior Divisional Personnel Officer, S.Rly, Trichy vs. Kanagambal] and in paragraph 7, it was held as follows:

Para 7: "The only question that has to be considered is whether the injuries sustained by a workman by an unknown person would amount to an accident arising out and in the course of the employment. It has been decided in the decision reported in Smt. Satiya vs. Sub-Divisional Officer, P.W.D. (1975-I-LLJ 394) (M.P.) that murder is an accident from the point of view of the person who suffered from it and it is an untoward event as defined in Section 3(1) of the Act. Therefore, sustaining injury while on duty and meeting his death subsequently has to be necessarily considered as an accident arising out of and in the course of employment."

13. The Madhya Pradesh High Court vide its decision reported in 1971 (II) L.L.J. 273 [Madhya Pradesh State Road Transport Corporation and another vs. Mst.Basantibai and others] held in paragraph 9 of the judgment as follows:

Para 9: "... Normally, an employer owes no duty of care for the safety of his employee while the employee is proceeding to the place of employment from his house. The point, however, is whether the same rule prevails when the situation is abnormal and when as a result of outbreak of violence in the city, the law enforcement authorities promulgate curfew order requiring citizens to be within doors as the only means which can reasonably ensure their safety. In such a situation, when every citizen is expected to be within doors as a matter of safety, if an employer requires his employee, to come to the place of employment in early hours of the morning, it is reasonably foreseeable that the employee is likely to suffer injury at the hands of some ruffian while on the way to join his work unless adequate arrangements are made by the employer for the safety of the employee. Requiring an employee to come to work in such a situation is itself such an act from which harm to the employee is foreseeable and the employee being closely and directly connected with the act of requiring him to join his work, the employer must have his safety in contemplation. On the principles enunciated by Lord Atkin in Donoghue

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vs. Stevenson ([1932] A.C. 562) the employer must, in the circumstances prevailing in the instant case, be held to owe a duty of care to the employee while he was on his way to the place of work. The employer should have taken adequate care for the safety of the employee while he was on his way either by providing safe transport or some persons to accompany and guard him. In case it was not possible for the employer to make any arrangement for the safety of the employee, the employer should have temporarily closed down the business, as the only alternative of avoiding harm to the employee. It has also to be kept in view that the employee, in the instant case, unlike a police constable or a fireman, was not in such an employment where it was expected of him from the nature of employment to face the hazard of a riot."

14. This would set rest all the doubts raised by the insurer. Even otherwise, the Supreme Court in two of its recent decisions has spelt out the true meaning of the word "accident" found in the Workmen's Compensation Act. The first decision was the one reported in (2006) 5 SCC 513 [Jyothi Ademma vs. Plant Engineer, Nellore and another] and paragraph 7 of the judgment reads as follows:

Para 7: "The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In Fenton v. Thorley & Co. Ltd. [1903 AC 443] it was observed that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, A.C. In Trim Joint District School Board of Management v. Kelly [1914 AC 667] as follows :

"I think that the context shows that in using the word 'designed' Lord Macnaghten was referring to designed by the sufferer."

15. In fact, after referring to this decision the Supreme Court once again reaffirmed the said view in JT 2007 (1) SC 15 [Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another] and paragraph 26 of the judgment reads as follows:

Para 26: "Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, inter alia, having regard to the nature

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of the work and the situation in which the deceased was placed."

16. Apart from these facts, in the present case, the petitioner is not making any claim against the employer, who had engaged the deceased as an Auto Driver. But he is making a claim under the Social Security Scheme framed by the State Legislature. The said Scheme applies the provisions of the Workmen's Compensation Act to the Scheme framed under the provisions of the Act on the basis of mutatis mutandis to the manual workers. Further, the Scheme itself creates accident policy providing for compensation on account of an accident which has been explained in the explanation found in paragraph 17 of the Scheme. The Scheme only includes the intentional self injury, suicide, attempted suicide, injury caused while under the influence of intoxicating liquor or drugs or resulting from the injured worker committing any breach of the law. None of the exclusionary clause applies to the case of the petitioner's husband. Therefore, the liability of the insurer can never be washed away.

17. Under these circumstances, the writ petition shall stand allowed. The second respondent is directed to make payment to the petitioner towards the death of her husband within a period of two weeks from the date of receipt of a copy of this order. However, the parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition will stand closed.
Gri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretry,
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Security and Welfare Board,
No.36/1, Ramakrishnapuram Commercial Complex,
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3. The Deputy Inspector of Labour,
III Circle, Salem.

+ one cc to Mr. M.B. Gopalan, Advocate sr no. 18885
+ one cc to Mr. A. Nagarathinam, Advocate sr no. 18382

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